

Court of Appeals, State of Michigan

ORDER

People of MI v Zachery Charles Opdycke

Docket No. 324688

LC No. 13-069947-FH

Stephen L. Borrello
Presiding Judge

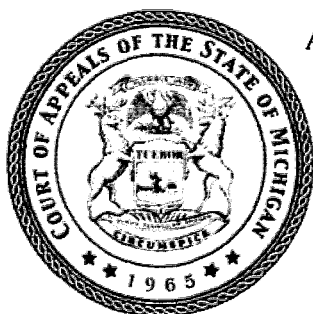
Peter D. O'Connell

Michael J. Kelly
Judges

The Court orders pursuant to MCR 7.205(E)(2) that in lieu of granting the delayed application for leave to appeal, defendant's sentence is VACATED, and this case is REMANDED to the Branch Circuit Court for resentencing. Because the upper limit of defendant's sentencing guidelines range was less than 18 months, the court was required to impose an intermediate sanction under MCL 769.34(4)(a) unless it provided a substantial and compelling reason to depart from the guidelines range and impose a prison term. *People v Stauffer*, 465 Mich 633, 635-636 (2002); *People v Lucey*, 287 Mich App 267, 270-271 (2010). Additionally, the 23-month minimum sentence imposed exceeded the upper limit of the guidelines range, constituting an upward departure, and requiring the articulation of a substantial and compelling reason. *Stauffer*, 465 Mich at 634-635.

On remand, the court shall impose an intermediate sanction and sentence defendant within the appropriate sentencing guidelines range, or articulate a substantial and compelling reason to depart from the guidelines range, along with a reason for the extent of the departure. MCL 769.34(4)(a); *People v Smith*, 482 Mich 292, 303, 313 (2008). We note that a probation violation is worthy of independent consideration when a trial court is considering an upward departure from the guidelines. *People v Schaafsma*, 267 Mich App 184, 186 (2005) ("Because the probation violation is objective and verifiable, the trial court in its discretion may conclude that the factor provides a substantial and compelling reason to depart from the sentencing guidelines.")

We do not retain jurisdiction.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

JAN 05 2014

Date

Chief Clerk